

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
GREENEVILLE

DONNA DIMIZIO,)	
)	
<i>Plaintiff</i>)	
)	
V.)	NO. 2:16-cv-006-HSM-MCLC
)	
NANCY BERRYHILL,)	
Acting Commissioner of Social Security)	
)	
<i>Defendant.</i>)	

REPORT AND RECOMMENDATION

This matter is before the United States Magistrate Judge by Order of Reference [Doc. 41] pursuant to 28 U.S.C. § 636, with respect to Plaintiff's Motion for Attorney's Fees under the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(A) [Doc. 40]. The United States has filed a Response in which it does not oppose the relief requested in the motion [Doc. 42].

Plaintiff's case was recently remanded by this Court to the defendant for further administrative review. While this fact makes plaintiff entitled to fees under the EAJA, attorney fees under the Social Security Act itself can only be awarded if the plaintiff is ultimately awarded benefits. Should Plaintiff be awarded past due benefits, counsel will be required to refund whichever fee is smaller; either the fee under the EAJA, or the fee under the Social Security Act.

In order to be entitled to an award of attorney fees and expenses under the Equal Access to Justice Act, all of the conditions set forth in 28 U.S.C. § 2412(d)(1)(A), (B) must be met. These are that:

- (1) the party seeking the fees is the "prevailing party" in a civil action brought by or against the U.S.,
- (2) an application for such fees, including an itemized justification for the

amount requested, is timely filed within 30 days of final judgment in the action,

- (3) the position of the government is not substantially justified and
- (4) no special circumstances make an award unjust.

The undersigned magistrate judge finds that all of these factors are met in this case.

An affidavit of the hours expended by Plaintiff's counsel and expenses incurred has been submitted. He represents that he has spent 28 hours in attorney time in handling this matter and requests \$182.00 per hour for the time incurred in 2016 and \$184.00 for the time incurred in 2017. The undersigned finds them to be reasonable. No request was made for an award of costs.

The undersigned RECOMMENDS that Plaintiff's Motion be GRANTED, and plaintiff be awarded EAJA fees in the amount of \$ 5,130.00 for attorney fees, and expenses in the amount of \$ 0.

Respectfully Submitted,

s/ Clifton L. Corker
United States Magistrate Judge